THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13059 OF 2007

Dated: 26th JUNE, 2007.

Between :

Smt. Sureddy Uma Devi … Petitioner

And

State Bank of India, P.B.B. Masab Tank Branch,
Hyderabad, rep. By its Chief Manager. … Respondent

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ORDER :

This writ petition is filed seeking a declaration that the action of the 1st respondent Bank in taking steps under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') against the petitioner as arbitrary and illegal.

It is not in dispute that the petitioner stood as guarantor by depositing the title deeds relating to her immovable property in connection with the loan extended by the 1st respondent Bank in favour of one Sri T. Venkateswara Rao.

It appears that the principal borrower committed default in repayment of the loan availed and consequently the 1st respondent issued a demand notice dated 20-04-2007 under sub-section (2) of Section 13 of the Securitisation Act, 2002 for discharging the liability in full i.e., Rs.14,26,835/- as on 20-04-2007 within 60 days failing which the Bank would exercise the rights under sub-section (4) of Section 13 of the Securitisation Act, 2002. Though the petitioner alleged that she did not receive any such notice from the 1st respondent Bank, it is admitted that she was informed by the principal borrower and a copy of the notice was also furnished to her.

In this writ petition, it is primarily contended by the petitioner that since the land upon which a charge was created as security is an

agricultural land, the respondent is restrained from proceeding against the said property in view of bar provided under Section 31 (i) of the Act. It is also contended that the respondent Bank is not entitled to proceed against the petitioner's property since the Act contemplates action only against the properties mortgaged by the borrower but not the guarantor.

Having heard the learned Counsel for the petitioner in detail and having perused the material on record, I do not find any substance in any of the above contentions.

At the outset, it is to be noted that the expression "borrower" has been defined under Section 2 (1) (f) of the Act as under :

> *(f) 'borrower' means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance."*

On a plain reading of the above definition, it is clear that the expression 'borrower' includes not only the person who has availed financial assistance but also the person who has given any guarantee as security for the financial assistance granted by the petitioner. Hence, the interpretation sought to be given by the learned Counsel for the petitioner that the word guarantee mentioned under Section 2 (1) (f) of the Act refers only to the guarantee by the borrower, is without any basis and cannot be accepted.

So far as the exemption sought to be claimed by the petitioner under Section 31 (i) of the Act on the ground that the lands in question are agricultural lands is concerned, the material placed before this Court is not sufficient to hold conclusively that the land in question is an agricultural land. At any rate, it is a pure question of fact

which cannot be enquired into and decided by this Court in a writ proceeding. In case the petitioner is aggrieved, it is always open to her to make a representation raising objections against the action proposed by the secured creditor, in which event the 1st respondent Bank is bound to consider the same in terms of Section 13 (3-A) of the Act and communicate the reasons in case the objections raised are not accepted. Without availing such remedy available under the Act, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed. However, this shall not preclude the petitioner to make an appropriate representation raising all the objections available under law against the impugned action of the respondent. No costs.

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G. ROHINI, J.

Dt. 26-06-2007

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